

JANIE S. NELSON
TERRY L. SULLIVAN

IBLA 81-7

Decided June 25, 1981

Appeal from decision of Alaska State Office, Bureau of Land Management, declaring placer mining claims abandoned and void. AA-38081 through AA-38087.

Vacated and remanded.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Location -- Mining Claims: Recordation

The owner of mining claims located after Oct. 21, 1976, must file copies of the notices of location of the claims with the proper BLM office within 90 days of the dates of location of the claims, failing which the claims are properly declared abandoned and void.

Where an unpatented mining claim is located in Alaska near the dividing line separating the Anchorage and Fairbanks districts, indicated on the map in 43 CFR 1821.2-1, such that it is virtually impossible from the map to determine with substantial accuracy in which district the mining claim lies, the timely filing of the location notice by the owner of the claim in either the Alaska State Office or the Fairbanks District Office will be considered as satisfying the requirement of 43 CFR 3833.1-2(b) of filing in the proper BLM office.

APPEARANCES: Janie S. Nelson and Terry L. Sullivan, pro sese.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Janie S. Nelson and Terry L. Sullivan have appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated August 29, 1980, declaring the Golden Three Nos. 1 through 7 placer mining claims, AA-38081 through AA-38087, abandoned and void for failure to file timely copies of notices of location pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and its implementing regulations, 43 CFR Subpart 3833.

Appellants' mining claims were located between August 13 and 15, 1978, and filed for recordation with the Fairbanks District Office on August 17, 1978. Subsequently, BLM determined that appellants' mining claims had not been filed for recordation in the proper BLM office under 43 CFR 1821.2-1 and forwarded copies of appellants' notices of location to the Alaska State Office where they were received on May 15, 1979, well after the filing deadline.

[1] Section 314 of FLPMA, supra, requires the owner of an unpatented mining claim located after October 21, 1976, to file a copy of the official record of the notice of location in the proper BLM office within 90 days after the date of the location. See 43 CFR 3833.1-2(b). It also provides that failure to file timely such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner and it shall be void. See 43 CFR 3833.4. The Board has repeatedly held that when a notice of location is not filed with BLM within 90 days from the date of location, the mining claim is properly declared abandoned and void. John C. Buchanan, 52 IBLA 387 (1981), and cases cited therein.

The applicable regulation designating the proper BLM office for filing notices of location is 43 CFR 1821.2-1. It specifies that mining claims located in "Northern Alaska" are to be filed with the Fairbanks District Office and mining claims located in "Southern Alaska" are to be filed with the Alaska State Office. It also provides a map indicating the dividing line between "Northern" and "Southern" Alaska.

In their statement of reasons for appeal, appellants state that they attempted to file with the Alaska State Office on August 16, 1978, but were told that the proper BLM office for filing was the Fairbanks District Office. Accordingly, on August 17, 1978, they filed with the latter office, only to learn at a later date that they had filed in the wrong office.

We recently had occasion to deal with a similar situation in Inspiration Development Co., 54 IBLA 390, 88 I.D. (1981). We pointed out therein that Alaska is unique in that it is the only state with two BLM offices having jurisdiction to receive recordation filings. However, we concluded that the regulation upon which a mining claimant must rely in determining in which office to file was "inherently ambiguous" where a mining claim is located near the dividing line

between "Northern" and "Southern" Alaska such that it is virtually impossible from the map depicted in 43 CFR 1821.2-1 to determine with substantial accuracy in which district the mining claim lies.

Inspiration Development Co., supra at 395. Accordingly, we held that where such a mining claimant files timely in one of the Alaskan BLM offices, such filing will be considered as satisfying the requirement of 43 CFR 3833.1-2(a) of filing in the proper BLM office. 1/

This is the situation here. Appellant's mining claims are situated in sec. 31, T. 17 S., R. 4 W., sec. 36, T. 17 S, R., 5 W., and sec. 1, T. 18 S., R. 5 W., Fairbanks meridian, Alaska. These claims are located near the dividing line depicted on the map in 43 CFR 1821.2-1 such that it is virtually impossible from that map to determine with substantial accuracy in which district the mining claims lie. Appellants filed timely in the Fairbanks District Office. They will be held to have complied with the requirements of 43 CFR 3833.1-2(b) of filing in the proper BLM office.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is vacated and the case remanded to BLM for further action not inconsistent herewith.

Bruce R. Harris
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

1/ The rationale developed in Inspiration Development Co., supra, was decisive in Lowell L. Patten, 55 IBLA 125 (1981).

